AN INTERSTATE TRADE COMMISSION[1]

The public is coming more and more to see that the best solution of the trust problem can be effected only through an interstate trade commission or some other administrative governmental agency which shall assume direct control of combinations which are so extensive as practically to control production and prices.

Other attempts are certain to end in failure. The reduction of the tariff, the abolition of preferential railroad rates, the efforts to restrict overcapitalization, and the like are partial measures which do not at all reach the essence of the evil. A prohibitory tariff undoubtedly lends its aid to the formation of monopoly in certain industries, but many of the greatest of the trusts, such as the Standard Oil and the meat packers' trust, did not at all owe their origin or their continuance to the tariff. Moreover, if a protective tariff were abolished, international trusts could still be organized. There would be some temporary inconveniences and obstructions for those who seek this end, but they would finally attain it. Tariff legislation is merely scratching the surface of the great trust question; it does not reach the vital part of it at all. I think most of us are now in favor of extensive reductions of the duties; but let us not hope to overcome private monopoly by limiting our efforts to the tariff.

The restraint of overcapitalization is also valuable—valuable chiefly to prevent frauds upon investors—but overcapitalization is merely an incident to the combinations which have been formed. A physical appraisement of property with or without a just estimate of the good-will of an established business is of the highest importance in determining whether or not trust prices are extortionate. It is an element in securing publicity; but so long as combinations have the power to fix prices they will be apt to make them extortionately high whether these combinations are overcapitalized or not. Overcapitalization was not the cause nor even an important incident in the acquisition of monopoly by

[1] A paper read before the Western Economic Society at Chicago, March 1, 1911.

the Standard Oil. That came primarily from rebates and other discriminations by the railroads.

The effort to secure equal treatment of all customers by common carriers is also immensely desirable. If it had been applied in time many evils would have been obviated, but that, like the tariff, reaches only one phase of the trust question. The advantages already acquired by these vast combinations enable them now, even without special favors, to crush competition by dealing on a large scale with economies which the smaller producer cannot secure.

Most fatuous of all is the effort to destroy monopoly by the mere dissolution of the trust by judicial decree under the Sherman law. While that law exists in its present form, of course, it should be enforced, but its enforcement without amendment or supplement produces a great deal of evil without sufficient corresponding benefit. Competition cannot be restored by dissolution: we cannot "unscramble eggs" already intermingled; and it is problematical whether under present conditions competition ought to be restored. Competition has done much for the world. It has been in the past the most prominent feature of our industrial progress. It has promoted improvements, quickened invention and skill, reduced the cost to the consumers and multiplied their number, stimulated production, and increased the employment of labor. But competition, although valuable and necessary as a phase in our industrial development, has certain grave disadvantages. Based upon self-interest, it promotes skill and energy but also indifference to the welfare and even the rights of others. It is part of the great struggle for existence and, like natural evolution, has resulted in the destruction of feebler forms of industrial life and has been accompanied by immense waste and sacrifice. Scores and hundreds of smaller concerns perish to make the food of the greater industrial organisms. It was because the struggles of competition became so intense, when distant points became united through steam and telegraph; because the margin of profit grew smaller and the outlay for putting goods on the market constantly increased until often a greater effort was required for this than for production itself; it was because competitive

advertising, commercial travelers, the useless reduplication of plants and administrative expenses so increased that industries engaged in the same branches of business united both to reduce the cost of production and to increase and maintain the prices of their products—thus it was that the trust and the monopoly began to take the place of competition. This was as much a natural evolution as competition itself. We must realize that with the solidarity of our present industrial life, competition is not the ultimate goal but merely a phase of our development.

Trades unions were just as illegal at common law as the trusts are today. Every combination of laborers to advance wages was punished as an offense against the law of free competition in the labor market. But competition had to give way to co-operation and the condition of the workingman was greatly improved by organized labor. Will not the same prohibitions be found equally ineffective against organized capital? Co-operation is part of the world's progress. It is useless to enact laws which breed infinite turmoil and cripple our productive agencies while they fail to accomplish the end they have in view. Legislation cannot overthrow monopoly but it can control it. We cannot wall up the Mississippi by a dam but we may direct it into safe and convenient channels.

With these combinations and the monopoly they introduced there came great evils: the power to dictate terms to the world; to reduce the price to the producer of the raw material; to increase the price of the product to the consumer and sometimes to impair its quality; to restrict production and thereby diminish the number of consumers; to curtail the employment of labor and reduce the wages paid for it. Monopoly in private hands, if unrestrained, produces greater evils than competition itself. But if it has come in pursuance to a natural law, as inevitable as gravitation, how can it be annihilated without crippling or annihilating the industry in which it exists? We may indeed for the moment drive again into the air a vast substance which has fallen upon the earth, but however high we project it, it is sure, in some form, to come to the earth again; and however often we may dissolve into their original fragments the great combinations we fear, they are sure, in some

form, again to come together. The Standard Oil Company has been dissolved; the man who held one certificate of stock now holds more than a score in its constituent companies; but when the same men own the stock they can and will inevitably act as a unit in these smaller companies just as they acted as a unit in the greater one. There may be different names and different directors, but most of the proxies still go to 26 Broadway, and if they went to a score of different places there would still be the same underlying purpose to control the trade. Has the value of this stock diminished since dissolution? Has it not rather increased now that the courts have sanctioned the present organization, and is it not the independent concerns that are the sufferers?

Federal courts are ill qualified permanently to administer our great corporations. Even if they were well qualified, there is no law under which they can adequately control either the prices or quality of the product, the amount of production, or the treatment of subordinates and employees. Competition is not restored and there is still no sufficient control of corporate acts. This can only be furnished by a special bureau or commission authorized by federal law to regulate the conduct of industrial combinations.

A bill has been drawn, and is now under consideration by a committee of the Civic Federation, to create an Interstate Trade Commission and to provide for the license of those who engage in interstate commerce. The proposed law applies only to companies having assets or capital of more than two million dollars. The powers of the present Bureau of Corporations are to be transferred to this Interstate Trade Commission, which is to be composed of seven members. The application for a license must set forth the principal office of the applicant, the places between which its business is conducted, the commodities or kind of service to which it relates, the value of the gross assets, the amount of the annual gross receipts, the number and par value of shares of stock which it owns in other corporations, its trade agreements with others, the list of prices charged, and the period of time in which they are to remain in effect and during which they cannot be altered. If the applicant be a corporation, a copy of its charter is to be furnished, with a statement of the amount of stock issued, the

amount paid and manner of payment, the number of stockholders, its surplus and debts, the cost and value of property and franchises, the number of its officers and employees, with their salaries and wages, its earnings from each branch of business, its expenses, and such further information as the commission may demand. The commission may require the applicant to produce its books and papers, and may inquire into its management and refuse a license to an applicant who has violated the Sherman law, or has overcapitalized its stock, or used unfair and oppressive methods of competition, or accepted rebates, or failed to provide for its own liability for unfair or oppressive practices, or secured immunity by unreasonable statutes of limitations.

If the applicant has complied with the act, a license for interstate commerce is granted with the right to use the words "United States Registered." If any licensee shall afterward conduct its business in a manner which would have authorized a refusal of a license, the license may be suspended or canceled. No trade agreement is permitted unless copies are filed with the commission. The commission is to determine after hearing whether a trade agreement is lawful or not. If unlawful, it must be canceled. But if it be shown that the business is unprofitable from overproduction or destructive competition, trade agreements may be permitted limiting production and fixing prices, provided production be not reduced below public demand and provided prices do not afford an unreasonable profit. With this permission, such agreements may be made for not exceeding three years, but the commission may afterward withdraw the permission unless the parties consent to a reduction in price or increase in production as the commission may require. If a trade agreement be held unlawful, the commission may revise the modification of such agreement and adjust the relations of parties and appoint receivers and sell property and reject or ratify plans for reorganization.

Anyone injured by oppressive competition or discriminating rates or rebates or overcapitalization may complain to the commission, which may cite the offender to answer. If he make reparation he may be relieved of the particular violation of law complained of. If not, the commission is to investigate, or may

institute an inquiry of its own motion and recommend prosecutions by the Attorney-General. If the commission determine that any complainant is entitled to damages, payment may be enforced by the federal district court, where the commission's order will be *prima facie* evidence of the facts stated. The commission may require annual reports from the licensed corporations with specific answers to all questions, and may prescribe the forms of all accounts and records and have access to the same, and may employ special examiners and subpoena witnesses and compel the production of documents.

In determining the value of the property of a corporation the commission may consider the original cost, the replacement cost, and the market value—including good-will and the market value of obligations issued by it, and the fair value of services rendered in its organization, of any secret process in its possession and of patent rights and other lawful franchises, but excluding all values depending upon a monopoly or illegal trade agreements. An appeal may be taken to the Supreme or Commerce Court from an order of the commission.

The foregoing bill would greatly promote publicity. It would do much to prevent overcapitalization; it would restrain unreasonable trade agreements regulating prices or restricting production, and it would allow reasonable agreements for this purpose—a measure which is greatly needed where competition is ruinous. But it would fail to accomplish the most essential object of all trust legislation, which is to regulate effectively gigantic corporations that, by their own control of the market without any trade agreements at all, are unreasonably charging exorbitant prices for their products or depressing prices of raw materials and other things they buy, or crowding out competitors by oppressive means. For this purpose a fuller control over their conduct by the Trade Commission is essential. In lieu, therefore, of ineffective dissolution by the decree of a court, drastic and complete control by the government of such injurious monopolies should be provided.

The analogies of the Interstate Commerce Commission point the way to this fuller recognition. Such regulation does not need to be applied to every case but only to cases where the trust or

combination is found to have acted in unreasonable restraint of trade. Where genuine competition exists, such competition is the best fixer of prices and regulator of conduct, and even where it does not exist, a monopoly whose conduct is neither unreasonable or oppressive, need not be restrained. It is only where oppression begins or where undue profits are made at the expense of the public that further control is necessary. Dissolution is no adequate remedy. It is only constant supervision and control day by day which can restrain monopoly. Therefore, in addition to the criminal penalties imposed upon those who take part in the unlawful act, and in addition to the fines which may be justly imposed upon the corporation itself, it should be provided that the Trade Commission should exercise the same sort of control over those injurious monopolies that the Interstate Commerce Commission exercises over common carriers. There should of course be a preliminary investigation and a finding whether the unreasonable restraint of trade actually exists. This finding should be made either by a federal court, as in the Standard Oil and Tobacco cases, or after an investigation upon notice by the Trade Commission itself.

A provision for such investigation and finding is furnished in the Canadian "Act to Provide for the Investigation of Combines, Monopolies, Trusts, and Mergers," approved May 4, 1910. By that act any six persons may make application to a judge for an order, setting forth the nature of the combine, the persons involved, the manner in which it restricts competition, and the extent to which it operates to the detriment of producers and consumers and of trade. If the judge is satisfied that such unjust combination probably exists, a board of commission of three members is appointed to investigate. The complainants choose one and the accused another, and the third is appointed from among the judges of courts of record in the Dominion. The report must be signed by at least two members of this board and is a final determination that the combine is or is not injurious to trade.

The same sort of investigation in this country by the Trade Commission and the finding of unreasonable restraint should be in the same manner conclusive upon the parties. But the further remedy proposed by the Canadian act is inadequate. If the

injurious combine is facilitated by customs duties they may be taken off, if by patents they may be revoked, in other cases a large fine is the only recourse. The remedy which I would suggest in addition to appropriate fines and the imprisonment of guilty persons would be to place the injurious combine under the control of the Trade Commission as completely as railroads are subjected to the Interstate Commerce Commission.

What is the character of that control? By the "Act to Regulate Commerce," passed February, 1887, and by its amendments it is provided that all charges made for any service by common carriers shall be just and reasonable. Unreasonable charges are prohibited and declared unlawful. The same jurisdiction should be conferred upon the Trade Commission as to the prices of the products or services of interstate monopolies. By the commerce act common carriers must make just and reasonable classifications. So should industrial monopolies be required to do. Common carriers are forbidden to make special rates or rebates but must charge all alike: they can grant no undue preference or advantage to anyone to the prejudice or disadvantage of another. The same provision should apply to every monopoly. Common carriers must keep open for inspection their rates and charges. The industrial monopolies should be bound by the same rule as to their price lists except in cases for which the commission should decide that tables of prices are impracticable.

If the Interstate Commerce Commission finds that the rates charged by common carriers are unjust, unreasonable, or unjustly discriminatory or prejudicial, the commission is authorized to prescribe what shall be just and reasonable charges and may fix a maximum rate. The Trade Commission should be authorized to do the same thing in respect to industrial monopolies, prescribing not only the maximum rate but also the minimum prices in cases where an unjust reduction may be used for the oppression of competitors.

If any person shall induce a common carrier to discriminate unjustly in his favor, such person may be fined or imprisoned. If anyone dealing with an industrial monopoly secures an unjust discrimination of the same kind, similar penalties should be imposed.

By the Act to Regulate Commerce the common carrier cannot withhold its cars or other facilities for transportation and may be compelled by mandamus to furnish them, at reasonable rates, equally to all the world. An industrial monopoly ought to be equally prevented from withholding its product, especially where that product is necessary to the life and well-being of society. An industrial monopoly must become like the common carrier, the servant of the community at large.

If a common carrier may not render dangerous or inadequate service, why may not an industrial monopoly be required to furnish goods that are not deleterious to the consumer and are of standard quality? Quality too should be under the control of the commission.

Whenever a common carrier has a controversy with his employees, a board of arbitration is provided for, whose award may be enforced in equity. No employer can prevent his employee from becoming a member of a labor union or unjustly discriminate against him because of such membership. Similar provisions should be made in regard to industrial monopolies. Railroads are required to furnish safety appliances for the protection of their employees and the public as well as limit the hours of continuous service for trainmen. Similar protection should be given in all monopolized industries and such requirements made as to hours of labor, the employment of women and children, and the conditions of labor and the minimum wages therefor, as will secure the health and reasonable well-being of employees.

In other words, every power exercised by the Interstate Commerce Commission over common carriers should be applied, wherever it can be made applicable to industrial and commercial monopolies which have acted in unreasonable restraint of trade.

Indeed, the power of the Trade Commission may properly go even farther in respect to these delinquents. Railroad companies are, up to a certain extent, natural monopolies. It is not always their fault if competition be suppressed. But if competition be wilfully stifled by industrial monopolies the power to control them may justly become more stringent and drastic than the power to control common carriers. Other governments have not hesitated

to assume drastic control over monopolies. In May, 1910, the German Reichstag passed a law regulating the potash industry, a monopoly, since Germany controls the world's output of potash and has the only known deposits. There were fifty-four companies owning and operating these deposits and the production was excessive. The government then fixed the proportionate part of the demand which each corporation was permitted to produce and established the maximum and minimum prices. A tribunal was appointed to reapportion from time to time the production of the several companies according to the demand. An elaborate system regulates the industry and protects the labor employed in the business. Similar regulations are contemplated or are in operation in regard to other industries. Wherever like conditions prevail in this country the Trade Commission should be invested with power to invoke similar remedies. If the monopoly produces too little, steps should be taken to increase the output; if too much, to restrain the overproduction.

Is it not evident that regulation and control of this description is infinitely better for the public, better for employees, and better for independent competition than the mere dissolution of these organizations to be followed inevitably by their reappearance in newer and more inaccessible forms?

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